

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

LOYALTY CONVERSION SYSTEMS  
CORPORATION

v.

Case No. 2:13-CV-655-JRG

AMERICAN AIRLINES, INC., ET AL.

**NOTICE OF SUBMISSION OF COMPETING  
DISCOVERY ORDERS**

Plaintiff Loyalty Conversion Systems Corporation (“Plaintiff” or “Loyalty Conversion”) and Defendants American Airlines, Inc., Delta Air Lines Inc., Frontier Airlines, Inc., Hawaiian Airlines, Inc., JetBlue Airways Corp., Southwest Airlines Co., Spirit Airlines, Inc., United Airlines, Inc., and US Airways, Inc. (collectively, “Defendants”) hereby submit competing Discovery Orders, attached hereto as **Exhibit A** and **Exhibit B**, respectively.

Counsel for Plaintiff and Defendants have met and conferred regarding the disputes referenced in this Notice. Over the weekend, the Parties will continue to attempt to reach resolution of the disputes. If the Parties reach an agreement on the Discovery Order, they will file an Agreed Discovery Order no later than Wednesday, January 22, 2014. If the Parties do not file an Agreed Discovery Order by January 22, 2014, the Court can presume that the Parties did not reach an agreement.

The disputes with respect to the Discovery Order are as follows:

**DISPUTE:** Number of hours of non-party depositions.

**PLAINTIFF’S PROPOSAL:**

Plaintiff proposes the Court’s standard limit of 60 hours for nonparty depositions. This case is no different, nor more complicated, than many other patent cases before this Court and

therefore believes the Court's standard order provides a sufficient amount of nonparty deposition hours. Defendants cannot operate under the assumption that nonparty depositions will take seven hours; in most cases such depositions will be much shorter. Furthermore, pursuant to the Court's standard Discovery Order and Plaintiff's Proposal, Defendants can seek leave to modify the time limits, if good cause exists.

**DEFENDANTS' POSITION:**

Defendants propose 84 hours of nonparty depositions with leave to request additional hours upon a showing of good cause. This case is different than other patent cases litigated in this Court. First, and most notably, Plaintiff's infringement contentions alone identify, on average, 6 third parties involved in the infringing activity per Defendant. Second, Plaintiff has confirmed that both the named inventors of the asserted patents are third parties in this case. Third, Defendants have identified a number of third parties with relevant prior art that will be subpoenaed and likely deposed in this case. Given the number of third parties already identified in the infringement contentions, asserted patents, and among the potential prior art, Defendants initially requested no hour limits on the number of nonparty depositions at this stage of the case.

After making this proposal and providing this explanation to Plaintiff, Plaintiff refused to consider any hour limit that was in excess of 60 hours. Defendants then proposed that nonparty depositions be limited to 84 hours, with leave to request additional hours upon a showing of good cause. Plaintiff rejected that proposal and insisted on the 60 hour limit. Defendants made a final offer of 75 hours, with leave to request additional hours upon a showing of good cause and Plaintiffs again rejected that proposal insisting on the 60 hour limit.

Defendants maintain that given the number of third parties identified by Plaintiff in the infringement contentions, the fact that the inventors are third parties, and the number of third

party prior art witnesses already identified by Defendants, a limit of 84 hours of non party depositions with leave to request additional hours upon a showing of good cause is more than reasonable.

**DISPUTE:** Number of experts and number of hours of expert depositions.

**PLAINTIFF'S POSITION:**

In an effort to compromise, Plaintiff proposes three common expert witnesses per side and two individual expert witnesses per party<sup>1</sup>—a proposal which provides two individual experts per party in excess of the Court's standard three expert witnesses per side. Further, Plaintiff proposes the following language in addition to the Court's standard language: “If an expert issues a damages or infringement report directed to more than one party, that expert may be deposed for an additional two hours for each such party remaining at the time of the deposition, not to exceed 14 hours.” Plaintiff believes the above limitations, which are in excess of the Court's standard order, are sufficient. Again, this patent case is no more complicated, and in many ways less complicated, than most other patent cases before this Court. Plaintiff does not believe additional hours for expert depositions are necessary.

**DEFENDANT'S POSITION:**

At this time Defendants do not agree with limiting the number of expert witnesses per party. There are eight separate defendants in this case, all of which are competitors and will be unlikely to share confidential, proprietary information regarding non-infringement and damages with the same expert. While Defendants do intend to use common experts where possible, they cannot currently commit to limit the number of experts, given the number of issues that appear to

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<sup>1</sup> At the time of expert disclosure, should there be only one defendant in the case, that defendant retains the ability to use the allotted number of both “individual” and “common” experts provided for in the Order.

be in the case at this early stage. Further, where defendant trials would take place during consecutive weeks it is unlikely that an expert's schedule would permit them to testify several weeks in a row.

As a compromise, at this time Defendants are willing to limit the number of hours for each expert witness' deposition testimony. Defendants propose adding the following language to the Discovery Order: "Experts may be deposed for eight hours per report issued. In the instance that an expert issues a single report directed to more than one party or on behalf of more than one party, that expert may be deposed for an additional two hours for each such party remaining at the time of the deposition, not to exceed 21 hours." In the event that there is an infringement report issued directed to eight defendants, while all eight defendants remain in the case that would result in less than 3 hours per defendant to depose the expert regarding the infringement contentions. If there are fewer defendants in the case at the time of the deposition, the time will then be adjusted accordingly.

Dated: January 17, 2014

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Ruel CV-5(a)(3) on January 17, 2014.

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